

**CIVIL SERVICE**

**CIVIL SERVICE COMMISSION**

**Classification, Services and Compensation**

**Classification Appeals**

**Proposed Amendment: N.J.A.C. 4A:3-3.9**

Authorized By: Civil Service Commission, Robert M. Czech, Chairperson.

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-1; and P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-208.

**A public hearing** concerning the proposed amendment will be held on:

Tuesday, October 18, 2011, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

**Please call** Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by November 18, 2011 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

### **Summary**

The Civil Service Commission has experienced a dramatic increase in the number of first-level classification appeals its Division of State and Local Operations has received since 2004. Between 2004, when the number of such classification appeals received was 154, and 2007, when the number received was 369, the number of such appeals more than doubled. The number more than doubled again between 2007 and 2010, when the number received was 838. State classification appeals have made up the bulk of these appeals, with 219 in 2007 and 738 in 2010. However, the large number of local classification appeals also consumes substantial agency resources. To better and more efficiently handle the enormous workload of first-level classification appeals, the Civil Service Commission has decided to propose an amendment to N.J.A.C. 4A:3-3.9 that would facilitate the gathering of information necessary to process the appeals, particularly in the case of State matters, and permit Commission staff more time to evaluate and decide the appeals.

Initially, it is noted that P.L. 2008, c. 29, abolished the Department of Personnel and established the Civil Service Commission in but not of the Department of Labor and Workforce Development. Pursuant to the law, the Commission does not have a Commissioner of Personnel, but a Chairperson/Chief Executive Officer. Therefore, references to the Department of Personnel and the Commissioner of Personnel are proposed for change as part of the amendment to N.J.A.C. 4A:3-3.9 regarding the classification appeal process. In particular, it is noted that any references to the Commissioner must be changed to Civil Service Commission, as it is the Commission, as a deliberative body replacing the former Merit System Board, that now has authority over appeals from first-level classification decisions. See N.J.S.A. 11A:2-11(h).

The Commission proposes deleting N.J.A.C. 4A:3-3.9(c), which concerns first-level classification appeals in State service, and replacing it with a new subsection (c), and new paragraphs (c)1 through 3. The current paragraphs (c)1 and 2 and subparagraphs (c)2i through 2iii are proposed for recodification, with amendments, as described below. The proposed new subsection (c) would set forth the information that the appellant or the appellant's union representative must include with a first-level classification appeal. Proposed new paragraphs (c)1 and 2 would set forth the obligations of the immediate supervisor and the program manager or division director in the appeal process, including signing the classification questionnaire and agreeing or disagreeing with the employee's assertions in the

appeal and, if disagreeing, explaining the nature of the disagreement. Proposed new paragraph (c)3 would indicate that the immediate supervisor and the program manager or division director must both complete the requirements of (c)1 and 2 within 15 days of the employee's submission of the appeal to the immediate supervisor. Within that same time frame, the program manager or division director would be required to submit the appeal to the agency representative, along with the employee's most recent PAR form.

Recodified N.J.A.C. 4A:3-3.9(c)4 would be amended to delineate the steps that the agency representative is required to complete, including attaching an organizational chart to the appeal and providing a copy of the appeal with the chart to an appropriate representative of the Civil Service Commission, or alternatively notifying the appellant of the need for more information, within 10 days of receipt of the appeal. The agency representative would have the option of recommending to the Commission representative the approval or rejection of the appeal and would be required to notify the appellant that his or her appeal has been forwarded to the Commission. Following receipt of any requested additional information from the appellant, the agency representative must, within 10 days of receipt of the information, forward the appeal, organizational chart and additional information to the Commission representative.

Recodified N.J.A.C. 4A:3-3.9(c)5 would be amended to require the Commission representative to issue a written decision letter within 180 days of the

Commission representative's receipt of the appeal and all completed documentation. Currently, the decision letter must be issued within 60 days. The proposed new subparagraph (c)5i would require only an abbreviated decision letter where the agency representative, Commission representative and appellant are all in agreement regarding a proposed title as a remedy in the appeal; proposed new subparagraph (c)5ii would require a more detailed decision where there is no such agreement. The proposed new N.J.A.C. 4A:3-3.9(c)5ii(1) through (3) would set forth the three possible decision types that may issue in the more formal decision letter; these decision types are currently listed in subparagraphs (c)2i through iii. Amendments to recodified sub-subparagraph (c)5ii(2) would clarify that the individual issuing a decision ordering the immediate removal of inappropriate duties is a "Commission" representative.

The first-level classification appeal process for local service, set forth in subsection (d), and proposed for amendment, would not include many of the changes proposed for the appeal process in State service, due to the comparatively smaller backlog of appeals and because of the different nature of local government, which may necessitate local appointing authorities themselves filing a first-level classification appeal. (State appointing authorities cannot file first-level classification appeals.) Therefore, subsection (d) is proposed for amendment to refer to an appropriate representative of the Civil Service Commission rather than the anachronistic "regional office of the Department of Personnel"; besides the

Department having been abolished, neither the former Department nor the current Commission has maintained any regional offices in many years. Further references to the Department of Personnel would be replaced by references to the appropriate representative of the Civil Service Commission. While the current subsection (d) indicates that an appeal “should” also include a completed classification questionnaire and an organizational chart, if requested by the Commission representative, the subsection would be amended to state that the appeal “shall” include those items if requested. Finally, subsection (d) would be amended to clarify that if the appellant’s supervisor has not signed the questionnaire within five working days of receipt of the appeal from the appellant, the appellant may forward it as is to the Commission representative but, as the subsection now states, with a notation of the date that the appellant presented it to the supervisor.

N.J.A.C. 4A:3-3.9(d)1 would be amended to remove a reference to the Department of Personnel and replace it with a reference to the Civil Service Commission, as well as to require that a written decision letter be issued within 180 days from receipt of the appeal, rather than the 60 days prescribed by paragraph (d)2, which is proposed for deletion. Additionally, paragraph (d)1 would be amended to set forth the required components of the decision letter, including a notice of appeal rights to the Civil Service Commission. Subparagraph (d)1i through iii, which set forth the three types of decisions that the Commission

representative may issue, would be amended only to insert the word “Commission” in reference to the representative issuing the decision letter.

N.J.A.C. 4A:3-3.9(e), which pertains to both State and local service, would be amended with some clarifying language, including grammatical changes and the statement that appeals from the decision of the Commission representative go to the Civil Service Commission rather than the Commissioner of Personnel. Paragraphs (e)1 and 2 would be amended to include another grammatical change, and to refer to the Civil Service Commission, rather than the Commissioner of Personnel, rendering a decision regarding an appeal from the decision of a Commission representative.

N.J.A.C. 4A:3-3.9(f) is proposed for amendment to refer to the circumstance in which an appeal is “granted,” rather than “upheld” by the Civil Service Commission. Paragraph (f)1, regarding State service, sets forth the manner in which the effective date of the classification change is to be determined. It is proposed for amendment to refer to an appropriate Civil Service Commission representative rather than the Department of Personnel and to the Commission rather than the Commissioner. Paragraph (f)2, regarding a grant in local service, currently states that the effective date is established by the Commissioner. That language is proposed for deletion and replacement by a statement similar to that found in paragraph (f)1 regarding State service, indicating that the effective date is

either the date on which an appropriate Commission representative first received the appeal, or such earlier date as ordered by the Commission.

Subsections (g), regarding the decision being the final administrative determination, and (h), regarding a possible need for enforcement of the decision, are proposed for amendment to delete references to the Commissioner and replace them with references to the Commission.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The Commission anticipates a positive social impact as a result of the proposed amendment. As noted in the Summary above, the purpose of the proposed amendment is to enable the Civil Service Commission to meet the challenge of accurately and efficiently processing, reviewing and deciding the burgeoning number of first-level classification appeals. It is true that the time for Commission staff to decide first-level classification appeals would be increased to 180 days from 60, rather than reduced. However, due to the huge first-level classification appeal backlog, Commission staff have struggled with the 60-day time frame. A time frame of 180 days is a more realistic time period within which a decision may be issued than the current 60, given the number of first-level classification appeals



currently being processed and the fact that the number of such appeals has been trending upward for most of the last decade.

Additionally, with regard to State service, the first-level classification appeals process would be more structured than at present, with each individual involved in a particular appeal knowing exactly what his or her role is and the time frames in which the individual must work. The fact that the employee's immediate supervisor and either the program manager or division director would review the appeal and provide information regarding any disagreement the supervisor or manager/director may have with the appeal, and do so within a prescribed time frame, is expected to be very helpful to Commission staff in making first-level classification appeal determinations. Additionally, the manager/director would be required to include the appellant's PAR form as part of the appeal package, and the agency representative would be responsible for ensuring that the appellant, supervisor and manager/director have fulfilled their roles in the process, as well as attaching the applicable organizational chart to the appeal.

If any of the required elements delineated in the proposed paragraphs (c)1 through 3 are missing from the appeal by the time it reaches the agency representative, the agency representative would be obligated to so notify the appellant. The present time frame for doing so, within 10 days of receipt of the appeal, would remain unchanged; the time frame of 10 days would also remain the same for the agency representative to submit all of the required information,

including any needed additional information, to the appropriate Civil Service Commission representative. It is noted that the description of the agency representative's obligations in obtaining any needed additional information, while not proposed for modification, would be set forth more clearly than it is at present. The Commission anticipates that the foregoing obligations, both new and existing, would help to minimize the likelihood that an incomplete appeal package reaches a Commission representative. Inclusion of the appellant's PAR with the appeal would be useful for determining the duties that the appellant is actually performing.

To further facilitate the first-level appeal process, the Commission representative would have the ability to issue an abbreviated decision letter where all parties are in agreement regarding the remedy proposed for the appellant. Moreover, issuing an abbreviated decision letter under these circumstances would help to expedite the processing of the appeal. Only where all the parties are not in agreement would the Commission representative be obligated to issue a detailed determination.

The first-level classification appeal process in local service, set forth in subsection (d), would not be substantially changed from its present form except for the proposed modification of the time frame from 60 days to 180 days for the Commission representative to process and decide the appeal. An employee, union representative or appointing authority would still be able to submit a first-level classification appeal to a Commission representative. Because a local appointing

authority may file a first-level appeal and the underlying fact that every local appointing authority represents a unique employment situation, major substantive amendments are not proposed to subsection (d) regarding the steps required for submission of the appeal. However, the language of subsection (d) would be amended to more clearly state the existing obligations of the parties and would require, rather than suggest (“shall” instead of “should”), that a first-level appeal include a completed classification questionnaire and an organizational chart, if requested by the Commission representative.

The most significant proposed change to paragraph (f)2, regarding appeals to the full Civil Service Commission from a first-level decision pertaining to local service, would concern cases where the appeal is granted. In this proposed change, the effective date of the classification action would be based on the date that the Commission representative receives the first-level appeal, or an earlier date as determined by the full Commission. This new flexibility would ensure that the date set best responds to the circumstances of the appeal.

### **Economic Impact**

The Commission anticipates a positive economic impact as a result of the proposed amendment. All of the proposed changes to the first-level classification appeal process discussed above are expected to bring greater efficiency as well as certainty to the process. In State service, it would be easier for employees, supervisors, managers and agency representatives in State service to track an

employee's first-level classification appeal while it is still at the agency. Additionally, the appropriate Commission representative would have confidence that all or most of the information needed to make an appeal determination has been submitted. First-level classification appeals in local service would still involve mostly the same procedures, but these procedures would be explained in clearer language.

The most obvious economic impact of a classification appeal occurs where the appeal is granted and the employee is ordered placed in a different title subject to a higher salary range. Even so, creating more certainty in the appeal process, particularly in State service, would help to minimize the use of staff time and Commission and appointing authority costs. Also, if the classification determination, either at the first-level or at the full Commission level, results in a higher salary for the employee, the accuracy of the determination and the efficiency with which it is effectuated would likely promote fiscal savings. More specifically, the more predictable and certain the process, the less time would likely pass between receipt of the appeal by a Commission representative and the time a determination is made, despite the increase in the prescribed decision time frame from 60 to 180 days. Ultimately, saved time means less disruption for appointing authority operations and a faster resolution for the appellant.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendment would govern classification appeals in the civil service of State and local government, and is therefore not subject to any Federal standards or requirements.

### **Jobs Impact**

It is not anticipated that the proposed amendment would cause the generation or loss of jobs. The proposed amendment would govern classification appeals in the civil service of State and local government.

### **Agriculture Industry Impact**

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment would govern classification appeals in the civil service of State and local government.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would govern classification appeals in the civil service of State and local government.

### **Smart Growth Impact**

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development

and Redevelopment Plan as defined under Executive Order No. 4 (2002).

### **Housing Affordability Impact Analysis**

Since it concerns classification appeals in the civil service of State and local government, the proposed amendment would have no impact on the number of housing units or the average cost of housing in New Jersey.

### **Smart Growth Development Impact Analysis**

Since it concerns classification appeals in the civil service of State and local government, the proposed amendment would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **SUBCHAPTER 3. CLASSIFICATION**

### **4A:3-3.9      Appeal procedure**

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) [In State service, a classification appeal from an employee or union representative shall be submitted, in writing, to the agency representative. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different existing title for the position, an explanation of how that title more accurately describes the duties of the position than the current or proposed title. The appeal should also include a completed position classification questionnaire. If the appellant's supervisor has not signed the questionnaire within five working days of receipt, the appellant may forward the questionnaire to the agency representative without the supervisor's signature but with a notation of the date of presentation to the supervisor.] **In State service, a classification appeal by an employee or union representative shall be made in writing. The appeal shall include a position classification questionnaire completed by the appellant, and shall specify the title which the appellant believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.**

**1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty and the title proposed by the appellant as appropriate to the duties performed. To the extent that the**

supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty and the title proposed by the appellant as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the appellant's most recent PAR form (see N.J.A.C. 4A:6-5).



[1.] **4.** The agency representative shall review the appeal, [provide] **affix to it** an [organization] **organizational** chart and ensure that the information set forth in (c)**1 through 3** above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or [shall] forward the appeal **with organizational chart** to the [Department of Personnel and so] **appropriate representative of the Civil Service Commission. The agency representative may in writing indicate with the submitted appeal a recommended approval or rejection of the appeal for specified reasons. The agency representative shall** notify the appellant[, and may indicate a recommended approval or rejection of the appeal for specified reasons] **of the submission to the Commission representative.** If additional information is required **of the appellant**, the agency representative shall forward the appeal **with organizational chart and the additional information** to the [Department of Personnel] **appropriate representative of the Civil Service Commission** within 10 days of receipt of the appellant's response to the request for additional information.

[2.] **5.** A representative of the [Department of Personnel] **Civil Service Commission** shall review the appeal, request additional information if needed, order a desk audit where warranted[, and issue a written decision **letter.** The decision letter shall be issued within [60] **180** days of receipt of the appeal and all

[requested information] **completed documentation as required by the representative of the Civil Service Commission**, and shall:

i. **Where the agency representative, Commission representative and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or**

ii. **Where the agency representative, Commission representative and appellant are not in agreement with the proposed title**, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the [Commissioner] **Civil Service Commission** and a determination that:

[i.] **(1)** The position is properly classified;

[ii.] **(2)** The position is properly classified, but that out-of-title duties are being performed, in which case the **Commission** representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or

[iii.] **(3)** The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

(d) In local service, an appeal from an employee, union representative[,] or appointing authority shall be submitted, in writing, to the appropriate [regional office of the Department of Personnel] **representative of the Civil Service Commission**. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the

position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by [the Department of Personnel] **a representative of the Commission**, the appeal [should] **shall** also include a completed position classification questionnaire and an [organization] **organizational** chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt **of the questionnaire from the appellant**, the appellant may forward the questionnaire to the [Department of Personnel] **appropriate representative of the Commission** without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the [Department of Personnel] **Civil Service Commission** shall review the appeal, request additional information if needed, order a desk audit where warranted[,] and [determine that:] **issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission and a determination that:**

i. The position is properly classified;

- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the **Commission** representative shall order, in writing, the immediate removal of inappropriate duties; or
- iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

[2. The representative's decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.]

(e) Appeals **from the decision of the Commission representative** to the [Commissioner] **Civil Service Commission** may be made by an employee, authorized employee representative or local appointing authority [and]. **The appeal** shall be submitted in writing[, ] within 20 days of receipt of the decision letter and [must] include copies of all materials submitted, [and] the determination received from the lower level[, ] **and statements as to** which portions of the determination are being disputed and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The [Commissioner] **Civil Service Commission** may render a decision based on the written record or appoint an independent classification reviewer. If the [Commissioner] **Commission** appoints an independent classification reviewer to

conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the [Commissioner] **Commission** within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions[,] and **the** recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

(f) If an appeal is [upheld] **granted by the Civil Service Commission**, the effective date of implementation shall be:

1. In State service, the pay period immediately after 14 days from the date [the Department of Personnel] **an appropriate Civil Service Commission representative first** received the appeal or reclassification request, or at such earlier date as directed by the [Commissioner] **Commission**; or

2. In local service, [an appropriate date established by the Commissioner] **the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.**

(g) The decision by the [Commissioner] **Commission** is the final administrative determination.

(h) See N.J.A.C. 4A:10-2 for enforcement of determinations by the [Commissioner] **Commission**.